

**IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU**
(Civil Jurisdiction)

Civil Appeal Case No.2 of 2011

BETWEEN: JOHNNY MALOKLES

Applicant

AND: ROSEMARIE SAXA

First Respondent

AND: EUGENE REMY

Second Respondent

AND: SANDY PAIA

Third Respondent

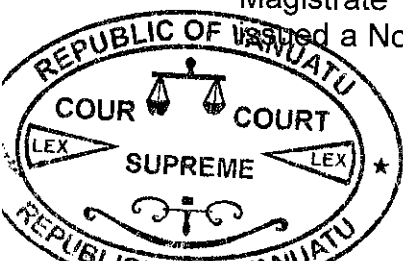
Coram: *Mr Justice Oliver A. Saksak*

Parties/Counsel: *Appellant in Person
Jane Tari for First, Respondent
No appearances by Second and Third Respondents.*

Date: *10th June 2014.*

JUDGMENT

1. The Appellant filed a Notice of Appeal through Messrs Saling Stephens and Associates on 19th December 2011. Mr Stephens however filed a Notice of Ceasing to Act dated 9th May 2014.
2. The Notice of Appeal is a bare one without any grounds of appeal. It contains only an indication that they would be filing the grounds at a later stage. That is unacceptable practice as it is not in accordance with appeal rules. It is sufficient to dismiss the purported appeal on this grounds alone.
3. On 20th December 2011 the Appellant filed an application for leave to appeal out of time against the decision of the Magistrate Court made on 16th November 2010.
4. The Court has made fixtures for the hearing of that application first on 15th May 2012. It was adjourned on that date to 26th June 2012. It was adjourned sine die pending the hearing of an application for stay of execution in the Magistrate Court. Nothing happened until 21 March 2013 when the Court issued a Notice of Conference returnable on 8th April 2013. Both Mr Stephens



and Ms Tari appeared and sought further adjournment pending determination of the Appellant's application by the Magistrate Court. The Court issued a minute on 8th April 2013 recording that position.

5. Then on 27th January 2014 the Court issued a Notice of Hearing returnable for 5th February 2014 after waiting for over 9 months.
6. On 5th February 2014 Mr Stephens did not appear. The Second and Third Defendant did not appear and had not appeared in any of the earlier hearings. Ms Tari was present and submitted orally that there was an appeal and indicated she was opposed to the Appellant's application for leave to appeal out of time. She sought the Court's indulgence to resolve the matter quickly. Counsel however proposed that in view of Mr Stephen's absence, Counsel be allowed to file written submissions within 7 days and thereafter a response within a further 7 days. The Court Ordered accordingly.
7. Mr Stephens has not filed any written submissions prior to him ceasing to act for the Appellant from 9th May 2014.
8. Ms Tari has not filed any response as there is nothing to respond to from the Appellant. On 23rd April 2014 a verbal reminder was made by Mrs Vinabit to Ms Tari. However no written submissions have been filed.
9. In absence of written submissions the Court has to decide on the application seeking leave to appeal out of time on the basis of Ms Tari's oral submissions made on 5th February 2014.
10. The application for leave to appeal out of time was filed without any supporting evidence by sworn statement. That is enough to refuse leave and to dismiss the application. The Court agrees with Ms Tari that the Appellant has no appeal before this Court unless leave is first sought by the Appellant and leave is granted by the Court.
11. Leave is refused. The application for leave by the Appellant is therefore dismissed.
12. The purported appeal filed on 19th December 2011 is also hereby dismissed. There will be no Order as to Costs.

DATED at Port Vila this 10th day of June 2014.

BY THE COURT.


OLIVER.A.SAKSAK
Judge

